

REMARKS/ARGUMENTS

Claims 1-5, 7-15 and 21-25 remain in this application. Claims 1 and 7 have been amended herein. Claims 6 and 16-20 are previously canceled. Claim 21 is cancelled herein. New claim 26 is presented herein.

1. Allowable Subject Matter

Examiner is thanked for the notification of allowed claims 9-15 and that claim 7 would be allowed if rewritten in independent form including all the limitations of the base and intervening claims. Claim 7 has been amended and rewritten in independent form to combine the limitations of claims 1 and 7. Claim 7 is allowable because the prior art does not teach or suggest a honeycomb filter with a ratio of hydraulic diameter between 1.7 and 2.0 of claim 7 combined with the other limitations of claim 1.

2. Claim Rejections Under 35 USC §102(e)

Claims 1-5, 8, and 21-23 are rejected under 35 USC 102(e) as being anticipated by US Design Patent No. D505,194.

Respectfully, the 102(e) rejection of claims 1-5, 8 and 21-23 is improper. D505,194 is devoid of any indication that the proportions are drawn to scale. Design patents are no different than the utility patents discussed in the previous action. Accordingly, it is impermissible to scale off from a drawing in a design patent, because the ornamental design features may be exaggerated for visual effect. Examiner's argument again hinges on an improper inference drawn from the figures about the quantitative relationship between the respective thicknesses of the porous walls adjoining corners of the first channels being comparable to the thickness of the porous walls adjoining the edges and the scaled hydraulic area ratio (Examiner has scaled 3/32" and 1/8").

Previously Applicant's discussed existing precedent, and established that patent drawings do not define the precise proportions of the elements shown and *may not* be relied on to show particular sizes if the specification is completely silent on the issue. See In re Wright, 569 F.2d 1124, 1127, 193 USPQ 332, 335 (CCPA 1977) ("Absent any *written description* in the specification of quantitative values, arguments based on measurement of a drawing are of little value."); In re Olson, 212 F.2d 590, 592, 101 USPQ 401, 402 (CCPA 1954). Examiner was also directed to the Manual of Patent Examining Procedure, Section 2125.

Additionally, Applicants direct Examiner's attention to the recent case of Nystrom v. Trex, 71 USPQ2d 1241 (CAFC 2004). In that case, the Court reaffirmed as improper reliance on unstated dimensions from patent drawings to anticipate claims. Id. at 1250. The Court went on to indicate prior art patent drawings cannot be the "basis for challenging the validity of *claims reciting specific dimensions not directly disclosed in such prior art.*" Id. at 1250.

This is a case like Nystrom, in that specific dimensions (and even ranges) are disclosed in claims 1, 21 and 22 and they are not "*directly disclosed*" in D505,194. Accordingly, it is impermissible to reject the present claim 1 under 102(e) based upon D505,194 because it does not show the claimed feature, i.e., that the respective thicknesses, as amended (adding the limitation of claim 21), are in the range of 0.8 to 1.2 and a ratio of the hydraulic diameter of the first channels to the hydraulic diameter of the second channels is in a range from 1.1 to 2.0. Claim 21 is cancelled herein.

Likewise, as the rejection relates to claim 22, D505,194 does not directly disclose the a filter with fist channels of square cross-section, with corners of the first channels having a shape including a fillet or a bevel wherein the range of thickness of the porous walls

adjoining corners of the first channels is in a range of about 0.8 to 1.2 times the thickness of the porous walls adjoining edges of the first and the second channels, and a ratio of the hydraulic diameter of the first channels to the hydraulic diameter of the second channels is in a range from 1.1 to 2.0. Thickness ratios above 0.8 minimize cracking as the hydraulic area ratio is enlarged, and maintaining the ratio below 1.2 minimizes thermal shock penalties. Clearly, there is no teaching, suggestion or motivation to design into this range based on D505,194. The term "about" has been deleted to make the scope of the claim 22 more precise.

With regards to claim 23, Examiner state that fillets are shown in Figs. 8 and 10 and a bevel is shown in Fig. 11. This is clearly incorrect. Figs. 8, 10, and 11 are enlarged cross sections at the ends and the center of the same part. Thus, whatever feature is shown in the corner would be the same for all sections. We assert the drawings are of such poor quality that the shape of the corner feature is difficult to determine. However, we believe the features to be bevels, not fillets. This is because the sister patent (D522,117) shows an enlarged view in Fig. 12 illustrating bevels. In particular, the inventors have discovered that fillets are advantaged over bevels in terms of both mechanical and thermal stress. In any event, the claim as amended asserts the combination of fillets and a corner thickness ratio range from 0.8 to 1.2. This combination is neither taught, suggested or motivated by the prior art.

Accordingly, the rejections of claims 1, 22 and 23 are improper and should be withdrawn. Respectfully, the rejections of claims 2-5 and 8 are also improper as being dependent on a believed allowable claim and should, therefore, also be withdrawn.

3. Claim Rejections Under 35 USC §103(a)

Claims 24 and 25 are rejected under 35 USC 103(a) as being unpatentable over US Design Patent No. D505,194 in view of Pitcher, Jr. (US 4,417,908).

For the reasons given above, the primary reference (D505,194) does not teach, suggest or motivate the invention as now claimed. Accordingly, the obviousness rejection should also be withdrawn. We do point Examiner to Fig. 12 of US D522,117 which teaches a non-segmented filter having corner bevels. This document claims priority to the same priority documents as does D505,194. As in the previous design patent (D505,194), this document cannot be scaled either.

4. New Claims Added

New claims 26 has been added herein. Claim 26 is allowable for the reasons stated above and because it depends from allowable claim 7.

5. Conclusion

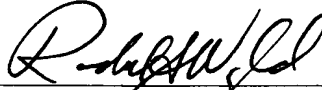
Based upon the above amendments, remarks, and papers of records, Applicants believe the pending claims of the above-captioned application are in allowable form and patentable over the prior art of record. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Applicants believe that a three (3) month extension of time is necessary to make this Reply timely. Should Applicants be in error, Applicants respectfully request that the Office grant such time extension pursuant to 37 C.F.R. § 1.136(a) as necessary to make this Reply timely, and hereby authorizes the Office to charge any necessary fee or surcharge with respect to said time extension to the deposit account of the undersigned firm of attorneys, Deposit Account 03-3325.

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Please direct any questions or comments to Randall S. Wayland at 607-974-0463.

Respectfully submitted,



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